

## **Advisory Opinion 2000-3**

### **MONTGOMERY COUNTY ETHICS COMMISSION**

#### **ADVISORY OPINION**

A member of a Montgomery County board, who also owns a private consulting firm, has requested Ethics Commission advice regarding certain proposals he is considering presenting on behalf of his firm to Executive and Legislative officials in Montgomery County.

#### **APPLICABLE FACTS**

The member states that he owns a consulting firm that is engaged primarily in international trade. Approximately 20% of the firm's work, however, is devoted to serving a national, not-for-profit organization that provides various services to senior citizens. Among other things, the organization is, under a federal grant program, one of several ethnic representatives in a federal seniors-employment program that places people 55 years of age and older as temporary employees with a federal agency. The member's consulting firm serves as the Washington representative of the organization for the purposes of this program, and did so when the member was appointed to the regulatory body. Based on his experience, the member believes that Montgomery County may benefit from such a program. He, therefore, is interested in approaching appropriate Montgomery County Executive and legislative officials concerning the program and the desirability of either participating in the federal program through the organization his firm represents or creating its own program funded entirely by County funds. In the latter instance, the member would plan to seek a key role in managing the County program "on a fee basis." He, therefore, has sought the advice of the Commission on whether "this may constitute a conflict [of interest] because of his interest on the County regulatory body. The implementation of the federal program or the private program would not necessarily involve the member's County regulatory body.

#### **APPLICABLE LAW**

This request potentially implicates several provisions of the Montgomery County Public Ethics Law, which is codified as Chapter 19A of the Montgomery County Code: §§19A-11, concerning the participation of public employees in certain matters in which they or related persons or entities have a financial; 19A-12, which imposes certain restrictions on the "outside" or "other" employment of public employees; 19A-14, concerning the use of a public employee's prestige of office; and 19A-21, which specifies who must register as a lobbyist and comply with the lobbyist disclosure provisions of the law. In pertinent part, §19A-11 provides:

- (a) Unless permitted by a waiver, a public employee must not participate in:

- (1) any matter that affects, in a manner distinct from its effect on the public generally, any:

\* \* \*

- (B) business in which the public employee has an economic interest; or

\* \* \*

- (2) any matter if the public employee knows or reasonably should know that any party to the matter is:

- (A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee.

§19A-12 provides:

- (a)(1) A public employee must not engage in any other employment unless the employment is approved by the Commission. The Commission may impose conditions on its approval of other employment.

§19A-14 provides:

- (a) A public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not the use of prestige prohibited by this subsection.
- (b) Unless expressly authorized by the Chief Administrative Officer, a person must not use an official County or agency title or insignia in connection with any private enterprise.
- (c) A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is:
  - (1) generally available to the public; or
  - (2) authorized by a County law, regulation, or administrative procedure.

§19A-21(a) provides:

Any individual or organization must register as a lobbyist under this Article if, during a year, that individual or organization:

- (1) communicates with a public employee to influence legislative action by a County agency, and for that purpose either:
  - (A) spends more than \$500, or
  - (B) receives compensation, including a pro-rated part of a salary or fee for services, totaling more than \$500; or
- (2) communicates with a public employee to influence executive or administrative action by a County agency, and for that purpose spends a total of more than \$500 for:
  - (A) meals and beverages;
  - (B) transportation;
  - (C) lodging;
  - (D) provision of any service;
  - (E) one or more special events; and
  - (F) one or more gifts.

#### **CONCLUSIONS & ADVICE**

Based on the facts stated above, the Commission advised the public employee: 1. In so far as he would act on behalf of federal grantee to implement a federal program, the Montgomery County Public Ethics Law would not apply to his discussions with appropriate County officials and would not constitute a conflict of interest unless the adoption or implementation of the federal program would require action by the public body on which he sits or any entity or person subject to that public body. If such action were necessary, he would have to recuse himself. 2. In so far as he would act on behalf of himself or his consulting firm with respect to the adoption and implementation of a new County program that would manage for a fee:

§19A-11 would permit prohibit him, unless permitted by a waiver, from participating as a public employee (i.e., as a member of this public body) in any matter involving that program;

§19A-12 would not prohibit the employee from servicing this new account without the approval of the Ethics Commission if his ownership and employment by his consulting firm was disclosed at the time of his appointment to the board because, under these facts, the new account would not constitute new employment for the purposes of the "other employment" restrictions;

He would be subject to the prohibitions of §19A-14 concerning the use of the prestige of this County office for private gain or the gain of another, the use of an official County or agency title or insignia in connection with any private enterprise, and the use of any County agency facility, property, or work time for personal use or for the use of another person; and

He would have to comply with the legislative and executive lobbying requirements of §19A-21(a) if his activities brought him within any of the thresholds set forth in that provision.

[signed]

Kenneth C. Jackson, Sr. Chair

May 8, 2000